

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 843-720-5270

525 EAST BAY STREET, SUITE 200
CHARLESTON, SC 29403-6655

Facsimile 843-414-7039

January 21, 2021

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk and Executive Director
South Carolina Public Service Commission
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

Re: Docket Nos. ND-2020-47-E, ND-2020-48-E; Additional Information Related to Utility Filings on the Southeast Energy Exchange Market Platform Agreement

Ms. Boyd,

On December 11, 2020, Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively, “Duke Energy”) made twin informational filings before both the South Carolina Public Service Commission (“Commission”) and the North Carolina Utilities Commission (“NCUC”) with information related to the Southeast Energy Exchange Market (“SEEM”) Platform Agreement, of which DEC and DEP are signatory members.¹ On the same day, Dominion Energy South Carolina (“DESC”) also made an informational filing with the Commission related to SEEM.²

According to the SEEM filing, SEEM will “establish[] a region-wide, automated, intra-hour platform to match buyers and sellers with the goal of more efficient bilateral trading and assumes utilization of unused transmission capacity to achieve cost savings for customers in the Southeast[.]”³

Due to recent developments at the NCUC related to these SEEM filings, the Southern Environmental Law Center (“SELC”), on behalf of the South Carolina Coastal Conservation League, provides the following comments to inform the Commission of these developments and provide additional context for SEEM in South Carolina.

¹ SC PSC, Docket No. ND-2020-48-E, *Duke Energy Carolinas, LLC and Duke Energy Progress, LLC’s Joint Informational Filing on the Southeast Energy Exchange Market (“SEEM”) Platform Agreement to be proposed to the Federal Energy Regulatory Commission* (Dec. 11, 2020) (hereinafter SC Duke SEEM Filing); NCUC, Docket Nos. E-2, Sub 1268 and E-7, Sub 1245.

² SC PSC, Docket No. ND-2020-47-E, *Dominion Energy South Carolina, Inc. – Southeast Energy Exchange Market Agreement* (Dec. 11, 2020).

³ SC Duke SEEM Filing, *supra* note 1, Cover Letter p. 1.

Joint Protest and NCUC Order

On December 17, 2020, the Sierra Club, Southern Alliance for Clean Energy,⁴ and the North Carolina Sustainable Energy Association (collectively, “NC Clean Energy Groups”), filed a Joint Protest in response to the DEC/DEP informational SEEM filing (included as **Attachment A**).⁵ Specifically, the NC Clean Energy Groups argued that the SEEM filing failed to comply with advance notice and other regulatory conditions approved by the NCUC in conjunction with the merger, including Regulatory Condition 3.9(b), which requires that Duke obtain explicit NCUC approval before entering into affiliate contracts involving transmission coordination.⁶ The NC Clean Energy Groups further objected to Duke Energy’s statement in the informational filing that N.C. Gen. Stat. §62-153, which requires utilities to obtain NCUC approval for affiliate contracts, would not apply to the SEEM agreement.

On December 23, 2020, the NCUC issued an order requiring the NC Public Staff to file a response to the joint protest on or before January 6, 2020, ordering DEP and DEC to abstain from filing the SEEM Platform Agreement before FERC until further order of the Commission, and setting the matter for oral argument on January 13, 2021 to “address the sole issue of whether the Commission’s preapproval of the Platform Agreement is required pursuant to either N.C.G.S. § 62-153 or the Regulatory Conditions before the Platform Agreement is filed with the FERC.”⁷

At the hearing, NC Clean Energy Groups argued that SEEM meets the definition of a power pool under FERC Order 888-A, which defines a loose power pool as any multilateral arrangement “that explicitly or implicitly contains discounted and/or special transmission arrangements[.]”⁸ NC Clean Energy Groups thus argued that DEP and DEC had not satisfied Regulatory Condition 3.9(c) because they did not file a revised Open Access Transmission Tariff (“OATT”), a pool-wide OATT, or the enabling agreements between SEEM members. The NCUC has not yet issued a decision on these issues.

Petition for Investigation and Rulemaking

On December 18, 2020, NC Clean Energy Groups also filed a petition requesting that the NCUC conduct an investigation into surplus energy sales and adopt rules and rates necessary for

⁴ SELC represents the Sierra Club and Southern Alliance for Clean Energy in the referenced NCUC proceedings; SC Coastal Conservation League is not party to either of the referenced NCUC proceedings.

⁵ NCUC, *Joint Protest of the Sierra Club, Southern Alliance for Clean Energy, and N.C. Sustainable Energy Ass’n*, Docket Nos. E-2, Sub 1268 and E-7, Sub 1245, <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=7b14331e-3e03-42e7-9c68-6fdc5c3b51a3> (**Attachment A**).

⁶ NCUC, Docket Nos. E-2, Sub 1095A, E-7, Sub 1100A, and G-9, Sub 682A, *Order Granting Motion to Amend Regulatory Conditions* (Aug. 24, 2018), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=cbed530c-f70b-42ae-ae5a-63afb97f3cdb>.

⁷ NCUC Docket Nos. E-2, Sub 1268 and E-2, Sub 1245, *In the Matter of Protest Related to Informational Filing by Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC, Order Scheduling Argument and Requiring Response by Public Staff*, available at <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=d1aee072-9e0c-4d6a-aaef-1747cc98f0a1>.

⁸ Fed. Energy Reg. Comm’n, *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888-A, 61 Fed. Reg. 21,540 at 21,594 (1996).

such sales (“Petition”)(included as **Attachment B**).⁹ In the Petition, NC Clean Energy Groups noted several concerns with the SEEM Platform Agreement, in particular:

1. *SEEM’s Benefits Relative to Costs*: SEEM is estimated to generate \$40 million in annual benefits across the entire SEEM footprint; these benefits appear to be minimal relative to other wholesale options, such as retail rate structures that encourage customers to optimize the timing of consumption, utilization of an independent system operator, or participation in an energy imbalance market or regional transmission organization (“RTO”).¹⁰
2. *Transparency Concerns*: In the Petition, NC Environmental Groups further noted several concerns related to SEEM’s accountability and oversight provisions, in particular, the lack of any opportunity for oversight by state regulators, the lack of an independent evaluator or market monitor, and its failure to require that members provide regulators or the public with complete information about the matches made or the generation source of energy being purchased.
3. *Exclusion of Independent Power Producers*: The structure of the proposed SEEM Market could functionally prevent independent power producers, such as solar facilities in North Carolina, from participating.¹¹
4. *Potential Impacts on Avoided Costs*: NC Clean Energy Groups further noted that the SEEM filing failed to consider the impact that SEEM could have on Public Utilities Regulatory Policies Act avoided cost rates in North Carolina.¹² The Petition cited recent testimony from the Georgia Public Service Commission’s Public Interest Advocacy Staff stating that the impacts of SEEM on avoided costs are unknown and recommending that the Georgia PSC require Georgia Power to file a report explaining how SEEM would affect calculation of avoided costs in Georgia.¹³
5. *Impact on Uneconomic Coal Dispatch and Clean Energy Uptake in the Southeast*: Finally, the Petition noted recent assessments showing that utility-owned coal-burning generators in wholesale markets disproportionately operate at a loss due to their ability to pass fuel and operational costs through to ratepayers.¹⁴ As proposed, the SEEM platform does not

⁹ NCUC Docket No. E-100, Sub 171, *Petition of the North Carolina Sustainable Energy Association, Sierra Club, and the Southern Alliance for Clean Energy for Investigation and Rulemaking to Implement N.C. Gen. Stat. § 62-154* (Dec. 18, 2020), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=a25c6ddd-81e8-48c9-b549-a23d692ced26> (“Petition”)(**Attachment B**).

¹⁰ *Id.* at 5-6.

¹¹ *Id.* at 7-8.

¹² *Id.* at 8.

¹³ *Id.* at 8-9 (citing Georgia PSC Docket Nos. 4822, 16573, and 19279, *Public Interest Advocacy Staff Rebuttal Testimony of John L. Kaduk, Timothy S. Cook, and Jeffrey D. Bower*, 70-71 (Dec. 4, 2020)).

¹⁴ *Id.* at 9 (citing Sierra Club, *Playing with Other People’s Money: How Non-Economic Coal Operations Distort Energy Markets* 20 (Oct. 2019), <https://www.sierraclub.org/sites/www.sierraclub.org/files/Other%20Peoples%20Money%20NonEconomic%20Dispatch%20Paper%20Oct%202019.pdf>; Union of Concerned Scientists, *Used, But How Useful? How Electric Utilities Exploit Loopholes, Forcing Customers to Bail Out Uneconomic Coal-Fired Power Plants* (May 2020), <https://www.ucsusa.org/resources/used-how-useful>).

include any safeguards to prevent utilities with heavier reliance on coal from selling excess coal-generated electricity at a loss, potentially suppressing renewable energy projects.¹⁵

S.C. Energy Market Reform Study Committee

As noted above, several of the concerns outlined in the Petition relate to the fact that SEEM would have minimal benefits to its signatory utilities' customers relative to other wholesale market reform options, including joining an RTO. As the Commission is likely aware, in September 2020 the S.C. General Assembly passed H.4940, which establishes an Electricity Market Reform Measures Study Committee in South Carolina (included as **Attachment C**).¹⁶ The bill references recent efforts to "diversify the resources used to reliably meet the energy needs of consumers in the State," including the passage of the Energy Freedom Act in 2019, and provides that "the adoption of measures to reform the structure of the existing electric generation, transmission, or distribution service may further promote the development of and access to low cost, reliable resources for the benefit of South Carolina consumers."

The Study Committee will be composed of representatives from a variety of utility, environmental, consumer, and business organizations, and with the assistance of an independent, third-party consultant, is directed to study a variety of electricity market reform measures and make a recommendation to the General Assembly on whether to adopt any of these measures. The Study Committee is required to issue its report to the General Assembly, along with its recommendations and any associated draft legislation, by November 1, 2021.

We hope this information is valuable to the Commission.

Respectfully,

s/ Kate Lee Mixson
Kate Lee Mixson

¹⁵ Petition, supra note 7, at 10.

¹⁶ H. 4940, *Electricity Market Reform Measures Study Committee*, https://www.scstatehouse.gov/sess123_2019-2020/bills/4940.htm (included as **Attachment C**).